



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Princeton Gamma-Tech, Inc.--Claim for Costs
File: B-228052.5
Date: April 24, 1989

DIGEST

1. Attorneys' fees claimed by prevailing protester are determined reasonable, and thus are allowable, where the hourly rates are within bounds of rates charged by similarly situated attorneys, and the hours claimed are properly documented and do not appear to be excessive.
2. Claimant is entitled to recover incurred company costs of filing and pursuing General Accounting Office protest, but not agency-level protest where costs claimed were sufficiently documented and agency did not articulate a reasoned analysis for the rejection of specific hours or show the costs to be otherwise unreasonable.
3. Claimant is entitled to recover proposal preparation costs which are adequately documented and shown to be allocable to the subject procurement.
4. Request for payment of costs associated with pursuing claim for recovery of attorneys' fees and costs of filing and pursuing protest are denied since such costs are not recoverable in the absence of express statutory or contractual authority.

DECISION

Princeton Gamma-Tech, Inc. (PGT), requests that the General Accounting Office (GAO) determine the amount it is entitled to recover from the United States Marshals Service for proposal preparation and filing and pursuing its prior protest. In Princeton Gamma-Tech, Inc., B-228052.2, Feb. 17, 1988, 88-1 CPD ¶ 175, we sustained PGT's protest, filed October 6, 1987, that the agency improperly evaluated the firm's and the awardee's proposals, and also failed to conduct meaningful negotiations under request for proposals (RFP) No. 87-7054, for walk-through metal detectors. We also determined that PGT was entitled to recover its proposal

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preparation costs and the costs of filing and pursuing the protest. PGT has requested reimbursement in the amount of \$61,391.06, consisting of \$17,134.25 in attorneys' fees, \$151.81 in out-of-pocket attorneys' expenses, \$29,773 in costs incurred in filing and pursuing the protest, and \$14,332 in proposal preparation costs. Because PGT has been unable to reach an agreement with the Marshals Service concerning the amount of payment, PGT has requested that we determine the amount of entitlement pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1988).

We determine that PGT is entitled to reimbursement for attorneys' fees, attorneys' out-of-pocket expenses, company protest costs, proposal preparation costs and reconsideration costs for a total amount of \$52,671.52.

ATTORNEYS' FEES

The attorneys' fees claimed are broken down as follows: (1) partner--73.75 hours at \$185 per hour and 3.5 hours at \$195 per hour (the hourly fee was increased January 1, 1988); (2) first associate--28.7 hours at \$90 per hour; and (3) second associate--2.5 hours at \$90 per hour, for a total of 108.45 attorneys' hours. The hours claimed for all three attorneys (from October 24, 1987, to February 19, 1988), are supported with copies of the bills for the services, including six pages of detail that list by date the services performed and specifically identify the services rendered and the performing attorney. The partner has certified that the hours claimed were incurred on behalf of the claimant in this case, that the fees claimed were billed to the claimant, and that the hourly rates charged represent the hourly rates established and charged by his firm for services like those furnished to the claimant by attorneys with comparable qualifications.

The attorneys' out-of-pocket expenses claimed for pursuing the protest consist of \$37.50 for local messenger delivery, \$11 for express mail, \$13.55 for long-distance telephone tolls, \$76.47 for Lexis research, and \$13.29 for a lunch meeting, for a total of \$151.81. These costs are supported by copies of the attorneys' bills for the services which include the out-of-pocket disbursements.

The Marshals Service generally argues that PGT has failed to demonstrate the reasonableness of its claim. While the agency believes it should pay some amount to PGT, it contends it is unable to determine what amount. Specifically, concerning the claimed attorneys' fees, the Marshals Service argues that PGT has failed to demonstrate the reasonableness of utilizing three attorneys on a "simple GAO

protest involving no discovery or hearing."^{1/} The Marshals Service further contends it should not be required to pay attorneys' fees concerning the protest issue of comparative scoring, on which the protester was unsuccessful.

Initially, we disagree that the issue of comparative technical scoring, on which the protester did not prevail, was a separable and distinct ground of protest for which recovery is not allowable. Rather, we consider this issue an intertwined part of the successful protest, which challenged the evaluation. In this regard, one of the bases on which we sustained the protest concerned the comparative technical scoring; we held the selection determination based on the comparative numerical scoring analysis was inconsistent with the operational testing results. (The situation here is distinguishable from that in Interface Flooring Systems, Inc.--Claim for Attorneys' Fees, 66 Comp. Gen. 597 (1987), 87-2 CPD ¶ 106, cited by the agency, where we disallowed costs for one issue, two unrelated specifications were challenged, the grounds for challenging the specifications were equally distinct, and we sustained the protest only for one of the specifications.)

Our authority to award protest costs, including attorneys' fees, is based on the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(c)(1) (Supp. IV 1986), which provides that protesters may recover the costs of filing and pursuing the protest including "reasonable attorneys' fees." The agency's position is that the protest effort by the legal counsel was duplicative or overstaffed and generally excessive given the nature of the protest, and that the fees claimed therefore are not reasonable. We have examined the costs claimed and disagree with the agency that they are excessive.

We do not question, nor does the Marshals Service, the \$185-\$195 and \$90 per hour rates billed for the partner and associates who handled the protest; these rates appear to be within the bounds of the rates normally charged by Washington, D.C. attorneys knowledgeable in the field of federal procurement law. On the number of attorney hours

^{1/} In connection with attorneys' fees, the Marshals Service also originally argued that PGT failed to submit affidavits attesting to the amount of attorneys' fees billed to PGT. This argument is now moot, as PGT subsequently submitted the affidavits, as requested by the agency, and in compliance with our requirement for adequate documentation for the payment of claimed attorneys' fees. See Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193.

claimed, generally, if properly documented, they are to be accepted unless specific hours deemed to be excessive can be identified and a reasoned analysis for their rejection is articulated. See NCR Comten, Inc., GSBGA No. 8229, Feb. 10, 1986, 86-2 BCA 18,822. Simply concluding that the hours claimed are excessive or suggest duplication of effort is wholly inadequate. Id. Here, the agency has advanced no specific instances to support a determination that the legal counsel's effort on the protest was overstaffed, and we are unable to identify any specific instances of duplication or overstaffing, based on our examination of the attorneys' bills. Accordingly, we have no basis to question the attorney hours expended and reject the agency's contention that they were unreasonably expended. We therefore allow attorneys' fees in the amount claimed, \$17,134.25.

Although the attorneys' out-of-pocket expenses claimed in the amount of \$151.81 are not separately certified, the agency does not question them, the attorneys' bills and the certification by the partner describe the expenses, and the amount claimed appears reasonable except for the \$13.29 claimed for the lunch meeting, which is not a reimbursable expense. Thus costs in the amount of \$138.52 are allowed. See Fischer-White-Rankin Contractors, Inc., B-213401.3, July 22, 1986, 86-2 CPD ¶ 88.

COSTS OF FILING AND PURSUING PROTEST

The costs claimed for filing and pursuing the protest consist of burdened employee hours worked and travel expenses. The personnel costs have been calculated by multiplying the applicable 1987 salary rate (burdened with a 175 percent overhead rate and a 16 percent general and administrative rate) by the hours claimed. The result is a total of 257 employee hours at a cost of \$29,495 as follows:

President	58 hrs	\$ 164	\$ 9,512
Outokumpu Group	16 hrs	@ 80	1,280
Vice President	109 hrs	@ 135	14,715
Product Manager	34 hrs	@ 62	2,108
Executive Assistant	<u>40 hrs</u>	@ 47	<u>1,880</u>
Total	257 hrs		29,495

The costs claimed, except for the Outokumpu Group electronics personnel (Outokumpu is PGT'S Finnish parent company), are properly certified. Additionally, travel costs are claimed in the amount of \$278, consisting of two trips by Mr. Wagman (PGT Vice President) to Washington, D.C., one to meet with Mr. Smith (attorney), and the other to attend the

bid protest conference in our Office. The travel costs are unsupported.

We disallow 80.7 hours of the total 257 hours claimed for a total of \$7,517 in disallowed company costs for filing and pursuing the protest. First, the 16 hours claimed for the Outokumpu Group electronics personnel are not supported by certification or individual affidavits, and the claimed travel costs are totally unsupported; as these costs are insufficiently documented they are not allowable. Malco Plastics, B-219886.3, Aug. 18, 1986, 86-2 CPD ¶ 193. Next, we disallow 50.4 hours of costs which were incurred in pursuit of the agency level protest, prior to the filing of the protest with our Office. Our Bid Protest Regulations provide for reimbursement of costs incurred in filing and pursuing only protests before our Office; thus, we disallow costs incurred in connection with the agency level protest. 4 C.F.R. § 21.6(d)(1) (1988). Finally, we disallow 1 hour of cost incurred for the vice president for discussion and review of patents for PGT's product (after receipt of the agency report) and 13.3 hours for typing of correspondence to the Outokumpu Group on the basis that the claimant has not shown these costs to be related to pursuit of the protest before our Office. The specific disallowed hours and costs are as follows:

President	10 hrs.	@164	\$1,640
Outokumpu Group	16 hrs.	@ 80	1,280
Vice President	22 hrs.	@135	2,970
Product Manager	6 hrs.	@ 62	372
Executive Assistant	26.7 hrs.	@ 47	1,255
Total	80.7		\$7,517

Of the remaining \$21,978 of the company's claimed protest costs, the Marshals Service has not identified specific hours as excessive or articulated reasons for their rejection or otherwise shown them to be unreasonable, i.e., has not shown that they exceed, in nature and amount, the costs that would be incurred by a prudent person in the pursuit of his protest. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, B-228187.4, et al., Apr. 12, 1989, 89-1 CPD ¶ _____. Thus, we have no basis to question the remaining hours expended and allow company costs claimed for filing and pursuing the protest in the amount of \$21,978 (\$29,495 - \$7,517).

PROPOSAL PREPARATION COSTS

The proposal preparation costs claimed consist of burdened employee hours worked. They have been calculated in a manner identical to that previously described for the costs for filing and pursuing the protest, and have also been properly certified and supported (except for the Outokumpu Group personnel). The result is a total of 159 employees' hours at a cost of \$14,332, as follows:

President	20 hrs.	@	\$164	\$ 3,280
Executive Assistant	30 hrs.	@	64	1,920
Outokumpu Group	12 hrs.	@	80	960
Field Service Manager	4 hrs.	@	58	232
Vice President	38 hrs.	@	135	5,130
Product Manager	15 hrs.	@	62	930
Executive Assistant	40 hrs.	@	47	1,880
Total	159 hrs.			\$14,332

The agency maintains that it was unreasonable for PGT to expend 159 hours in this endeavour considering the brevity of PGT's proposal; that PGT should have been familiar with the standard clauses and sections of the solicitation as a result of a previous contract; and that the hours claimed therefore are excessive. Further, the agency argues that since timecards have not been presented, the claimant has not submitted adequate documentation to support its claimed costs.

On the documentation of the claimed costs, the claimant has now submitted individual affidavits from the employees and certification from the firm's controller as to the hourly rate of the employees participating in the preparation of the proposal, except for the Outokumpu employees. We consider the affidavits of the individual employees submitted sufficient evidence to support the claim, as the time cards the agency specifically requests do not exist. However, the Outokumpu Group employee hours are not supported by individual affidavits, nor are their hourly rates certified. Accordingly, the costs for these employees are denied due to inadequate documentation. See Fischer-White-Rankin Contractors, Inc., B-213401.3, supra.

On the remaining proposal preparation hours claimed, as in the previous portions of the claim, the agency has simply concluded that the hours claimed are excessive; it has not identified specific hours as excessive nor has it articulated a reasoned analysis for their rejection, and thus has not shown that the amount exceeds that which would be

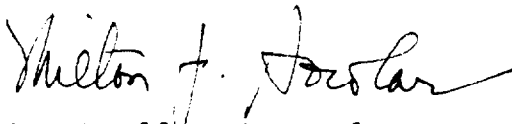
incurred by a prudent person in preparation of its proposal. See Patio Pools of Sierra Vista, Inc.--Claim for Costs, B-228187.4, supra. Under these circumstances, we have no reason to question the proposal preparation costs on the basis of hours expended. See NCR Comten, Inc., GSBGA No. 8299 supra.

COST OF PURSUING CLAIM

PGT requests reimbursement in the amount of \$12,000.63 in costs, including legal fees, associated with pursuing this claim. Such costs are not allowable, however, since no statute or contract provision authorizes their recovery. Malco Plastics, B-219886.3, supra. However, included in these costs is one-fourth of an hour of counsel's time, at \$195 per hour, for the firm's defense of an unsuccessful reconsideration request by the agency. Such reconsideration costs are allowable. See Pacific Northwest Bell Telephone Co., et al., B-227850.3, June 6, 1988, 67 Comp. Gen. ___, 88-1 CPD ¶ 527. Thus, \$48.75 is allowed for these costs.

CONCLUSION

In sum, we determine PGT is entitled to recover \$17,143.25 in attorneys' fees, \$138.52 in attorneys' out-of-pocket expenses, \$21,978 in company protest costs, \$13,372 for proposal preparation costs, and \$48.75 in reconsideration costs, for a total of \$52,671.52


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